Supreme Court, U. S.
FILED
AUG 3 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978.

No. 78-1183

CARBON FUEL COMPANY,

Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, DISTRICT NO. 17, UNITED MINE WORKERS OF AMERICA, and LOCAL UNIONS NOS. 6572, 7626 and 2236, UNITED MINE WORKERS OF AMERICA,

Respondents.

BRIEF ON BEHALF OF THE GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO, AS AMICUS CURIAE.

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INTEREST OF THE AMICUS CURIAE.

The Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, is an unincorporated labor organization of international scope which represents approximately 80,000 employees primarily in the glass industry. In such capacity, this international union conducts negotiations and enters into collective bargaining agreements for and on behalf of both the international union and its constituent local unions. Because of its direct role in collective negotiations, the question presented in the instant matter is of vital concern.

The conduct of the affairs and functions of the international union require that it have some certainty as to the scope of its liability under collective bargaining agreements it is party to. While the international conducts negotiations and enters into agreements with employers, it has no day-to-day involvement in either the operation of local union affairs or in the enforcement of agreements. The international union undertakes contractual obligations only within the traditional agency doctrine and with the understanding that the contractual terms are as bargained for during the process of collective negotiations.

Any implication that additional terms to these agreements might be found to exist as a matter of law would not only have a devastating effect upon traditional notions of collective bargaining and destroy the balance of economic power upon which Congress founded the national labor legislation, but would also call for a drastic restructuring of international unions. These are the concerns of the Glass Bottle Blowers Association of the United States and Canada, AFL-CIO which have caused this labor organization to submit this brief amicus curiae.

SUMMARY OF ARGUMENT.

The decision of the Fourth Circuit must be affirmed. A parent labor organization should not be held liable for breach of a no-strike clause by a local union where there is no evidence that the parent organization adopted, instigated, encouraged, supported or ratified any work stoppage in violation of the contract. To imply as a matter of law an "all reasonable means" requirement in a no-strike clause would be to rewrite the terms of the agreement negotiated by the parties and would constitute a dangerous intrusion into the traditional balance of power in the labor sphere in contravention of national labor policy. To suggest that additional terms may be implied in collective bargaining agreements would also foster, we submit, an atmosphere inimical to the interests of industrial peace.

ARGUMENT.

Point I.

The Terms of the Collective Bargaining Agreement Set Forth the Scope of Liability for Breach and the Court Must Defer to the Contractual Undertaking of the Parties.

In allocating liability for breach of a no-strike clause in a collective bargaining agreement, a Court is bound by the terms of the parties' agreement.

The right to strike has been recognized and sanctioned as concerted activity protected by the federal labor laws. *NLRB v. Erie Resistor Corp.*, 373 U. S. 221 (1963). This right may be bargained away in the process of collective negotiation. While national labor policy has held that a no-strike obligation is implied in a collective bargaining agreement where there is contractual provision for the resolution of disputes through grievance-arbitration procedures, *Textile Workers v. Lincoln Mills*, 353 U. S. 448 (1957), the courts have gone no further in implying either the existence of a no-strike clause or the nature or scope of such. To do so would constitute too great an intrusion into the collective bargaining process.

In fact, the Court has upheld the statutory right to engage in an unfair labor practice strike despite a contractual non-strike clause. *Mastro Plastics Corp. v. NLRB*, 350 U. S. 270 (1956). Furthermore, Courts have held that the basic statutory right to engage in a sympathy strike is not forfeited by a contractual no-strike clause unless there is a specific waiver of this right. See, e.g., *NLRB v. C. K. Smith*, 569 F. 2d 162 (1st Cir. 1977); *Gary Hobart Water Co. v. NLRB*, 511 F. 2d 284 (7th Cir. 1975). Thus courts have never decreed that by merely achieving a no-strike promise in a collective bar-

gaining agreement, an employer is entitled to a guarantee that there will be no work stoppages of any nature whatsoever. What these cases indicate, to the contrary, is that the relationship between the employer and its employees is defined by the provisions of the contract, and courts must give deference to that contract.

Not only are Employers not unconditionally entitled to a no-strike clause in a collective bargaining agreement, they are not entitled, as a matter of right, to have a parent organization, solely because it is a party to the contract, held strictly liable for breach. The nature and scope of the no-strike promise, including liability, is achieved through negotiations.

The Circuit Courts that have dealt with this issue have recognized this proposition. The Third Circuit in *Eazor Express Inc. v. International Brotherhood of Teamsters*, 520 F. 2d 951 (3rd Cir. 1975), *cert. den.*, 425 U. S. 908 (1976), (hereinafter *Eazor*), very specifically noted its limited role in remaking the terms to which the parties had agreed:

> It is true, of course, that the courts may not remake the parties' contract and may declare an implied obligation to exist only where there is a satisfactory basis in the express provisions of the agreements which make it necessary to imply certain duties and obligations in order to effectuate the purposes of the parties. *Id.* at 960.

The Court cited to *Kellogg Company v. NLRB*, 457 F. 2d 519, 524 (6th Cir. 1972), *cert. den.*, 409 U. S. 850 (1972) which had held:

> Courts cannot make contracts for the parties and can declare implied obligations to exist only when there is a satisfactory basis in the express provisions of the agreements which make it necessary to impose certain duties and obligations in order to effectuate the purposes of the parties. Before an obligation will be implied it must appear from the Contract itself that it was so clearly in the contemplation of the parties that they deemed it unnecessary to express it, and therefore omitted to do so, citing to *Refinery Employees' Union v. Continental Oil Company*, 160 F. Supp. 723 (W. D. La. 1958).

Such holdings are in accordance with traditional notions of contract law in which the role of the court is to effectuate the intentions of the parties.

Traditional contract law is based upon the mutual assent of the parties to all material terms of the agreement. *Crosby v. Paul Hardeman, Inc.*, 414 F. 2d 1, 7 (8th Cir. 1969). It has been said that "a contract cannot be implied, in fact, against the intention or understanding of the parties." *Jamaica Savings Bank v. Lefkowitz*, 390 F. Supp. 1357, 1361 (E. D. N. Y. 1975). Implied contracts are not favored in the law. See, e.g., *Fraser Sweatman, Inc. v. Schreiber*, 291 F. Supp. 276 (E. D. Pa. 1968). These basic tenets of freedom of contract are no less viable in the labor arena.

The Fourth Circuit's decision in *Carbon Fuel*, a reaffirmation of its earlier decision in *United Construction Workers v. Haislip Baking Co.*, 223 F. 2d 872 (4th Cir. 1955), *cert. den.*, 350 U. S. 847 (1956), adheres to these principles. In *Haislip*, the Court noted its proper role in looking to the contract language to ascertain whether more than the application of ordinary principles of agency had been agreed to in assessing liability for breach of the no-strike clause.

> There is nothing in the contract making defendants liable for "wildcat" strikes or requiring that they take any action with regard to them.

We submit that the language of the agreement between the parties is the proper focus in determining the scope of liability and that this has, in fact, been the touchstone of the decisions in other circuits on this issue.

The Third Circuit Court of Appeals in *Eazor Express, supra*, arguably had sufficient express contractual language upon which to imply the "all reasonable means" theory of liability. In that case the parties' no-strike clause expressly provided that there would be no strike "without first using all possible means of settlement as provided for in [the] Agreement . . ." *Id.* at 955. Further, one of the supplemental agreements before the court required, in specific contract language, that the Union "undertake every reasonable means to induce such employees to return to their jobs during any such period of unauthorized stoppage of work." *Id.* at 962. Finally, the contract in *Eazor*, in its exculpatory provisions, limited the liability of the Union only for any unauthorized acts of job stewards. *Id.* at 961.

The Third Circuit had another occasion to rule on this issue in *United States Steel Corp. v. United Mine Workers*, 534 F. 2d 1063 (3rd Cir. 1976). In that case the employees of Plaintiff corporation engaged in a wildcat strike in violation of an implied no-strike clause. The issue before the court was the propriety of injunctive relief prospectively enforcing the implied no-strike provision. The Court, in finding an obligation on the part of the unions to employ reasonable efforts to induce its members to return to work, again relied on specific contractual language. The collective bargaining agreement in *U. S. Steel*, imposed, in express language, a duty on the union to "maintain the integrity of the contract." *Id.* at 1073.

Similarly, in *Penn Packing Co., Inc. v. Amalgamated Meat Cutters, Local 195*, 497 F. 2d 888 (3rd Cir. 1974), the court premised its finding of a "best efforts" duty on the following contract language:

> The union for itself and for its individual members agrees and *guarantees* that there shall be no strike, stoppage of work, slowdown, or other interference with production. (emphasis added) *Id.* at 890.

Republic Steel Corporation v. United Mine Workers of America, 570 F. 2d 467 (3rd Cir. 1978), relied upon by Petitioner, is factually and legally distinguishable. The issue presented in that case was whether the International Union *could* be held liable for damages where UMWA local union members illegally picketed an employer, thus causing Republic Steel's employees to engage in a sympathy strike. The Court, in remanding the case, noted that:

> An implied obligation to take reasonable steps to prevent the spread of unlawful strikes can be imposed only to the extent that it can be exercised. *Id.* at 478.

It must also be noted that in *Republic Steel*, the local, sub-district and district unions were all exculpated entirely of any liability for the work stoppages.

Other courts which have been presented with this issue have refused to expand the scope of liability for contractual breach beyond the traditional doctrines of agency in the absence of express contractual language to the contrary. The Fifth Circuit in *United States Steel Corp. v. United Mine Workers*, 519 F. 2d 1249 (5th Cir. 1975), *rehear. den.*, 526 F. 2d 376 (5th Cir. 1976) refused to hold a union responsible for the unauthorized acts of its members, citing *Central Appalachian Coal Company v. United Mine Workers*, 376 F. Supp. 914 (S. D. W. Va. 1974). In *Central Appalachian Coal*, the court held that to hold a union liable for the breach of a no-strike obligation it would have to find that "an authorized union agent

acted in a manner tending to instigate, encourage, condone or otherwise support the breach activity." *Id.* at 922-923, the traditional restatement of the agency doctrine.

> Nothing in the bargaining agreement requires the union to discipline its members for participating in an unauthorized strike, and we cannot impose this duty as a matter of law. *United States Steel Corp.* at 1255.

Similarly the Sixth Circuit in the case of *Southern Ohio Coal Co. v. United Mine Workers,* 551 F. 2d 695 (6th Cir. 1977) explicitly rejected the proposition that a union may be held responsible for failure to use its "best efforts" in curtailing an unauthorized strike. *Id.* at 701.

Accordingly, the decision of the Fourth Circuit in *Carbon Fuel,* defers to traditional notions of contract interpretation, adhered to consistently in the circuits, by appropriately declining to rewrite the terms of the contract to which the parties had agreed.

Point II.

National Labor Policy Will Be Ill-Served if the Terms of a Collective Bargaining Agreement Are Set by Other Than the Parties to the Agreement.

It is undisputed that federal labor legislation was enacted with the express intent that labor peace be achieved through the process of collective negotiation. Labor-Management Relations Act, 29 U. S. C. 141 et seq.

As the Court held in *NLRB v. Insurance Agents' International Union,* 361 U. S. 477 (1960), the legislative history of the National Labor Relations Act, as amended, indicates that it was the intent that contractual terms and conditions of employment be agreed to at the bargaining table and that the National Labor Relations Board refrain

from settling the terms of the agreement. The policy behind such a holding—that "such an approach from both sides of the table promotes the overall design of achieving labor peace" leads to the clear inference that courts, likewise, should refrain from regulating the substantive terms of the agreement,

> . . . Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences.

See also *Teamsters Union v. Oliver,* 358 U. S. 283 (1959).

To permit a court to imply substantive terms in a collective bargaining agreement is also inimical to the concept of industrial peace. A basic tenet of collective bargaining is that the expectations of each party are incorporated, at the bargaining table, into an agreement which not only sets the terms of the employment relationship but removes the element of uncertainty about the parameters of that relationship. A court implied term which is not soundly based in the agreement is in complete derogation of the stated objective in federal labor policy of promoting industrial peace by encouraging the making of voluntary agreements governing relations between unions and employers. *NLRB v. American National Insurance Co.,* 343 U. S. 395 (1952).

While it is certainly true that arbitration is favored as the means for resolving disputes between parties to a collective bargaining agreement, see, *United Steelworkers of America v. American Manufacturing Co.,* 363 U. S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.,* 363 U. S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.,* 363 U. S. 593 (1960), courts have traditionally declined to require an Employer to utilize the arbitration forum to re-

solve issues of breach of the no-strike clause absent specific contractual language indicating that such was the intent of the parties. See, e.g., *Atkinson v. Sinclair Refining Co.*, 370 U. S. 238 (1962). Such a holding clearly reemphasizes that the appropriate focus of courts is on the specific terms of the parties' agreement in determining contractual rights and obligations. It also necessarily follows that basic inequities would result in implying extra-contractual obligations on the part of a parent labor organization for breach of a no-strike clause while continuing to deny them the forum which has been judicially sanctioned as being peculiarly appropriate for the resolution of labor disputes.

Finally, court imposed liability on an international labor organization would constitute an impermissible intrusion into the day-to-day affairs of the labor organization. Until the passage of the Landrum-Griffin Act of 1959, there was a general aversion to the courts intervening in intra-union affairs. While Landrum-Griffin regulates certain areas of union activity, it does not dictate the manner in which labor unions conduct negotiations nor specify any actions that must be taken in a given situation. In fact, courts have recognized that labor unions enjoy a broad area of discretion in the conduct of their affairs. See, e.g., *Vaca v. Sipes*, 386 U. S. 171 (1967).

To imply an "all reasonable means" standard into a no-strike clause would inevitably require international unions to restructure their organizations. In a situation such as this case, an international union would be faced with only two alternatives: to either refrain from participating in negotiations and being a party to a collective bargaining agreement and thus depriving its constituent locals of one of its most important functions, or relinquish a great deal of discretion in its relationship with its locals. Neither alternative advances the interests of labor peace or the statutorily guaranteed rights of employees.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the judgment of the Fourth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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Dated: August 1, 1979